

**Appendix A****LIST OF PARTIES****Comments/Petitions:**

1. The State of Alaska
2. Ameritech
3. BellSouth Corp., BellSouth Interactive Media Services, Inc., and BellSouth Wireless Cable, Inc.
4. The Coalition for Satellite Competition
5. DIRECTV, Inc.
6. Dominion Video Satellite, Inc.
7. EchoStar Communications Corporation
8. The State of Hawaii
9. Loral Space & Communications Ltd.
10. Microcom
11. National Cable Television Association
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13. News Corporation Limited
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15. PanAmSat Corporation
16. Primestar, Inc.
17. SkyBridge, L.L.C.
18. Tempo Satellite, Inc.
19. Time Warner Cable
20. United States Satellite Broadcasting Company, Inc.
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**Reply Comments:**

1. The Coalition for Satellite Competition
2. DIRECTV, Inc.
3. EchoStar Communications Corporation
4. Loral Space & Communications Ltd.
5. Northpoint Technology
6. Primestar, Inc.
7. SkyBridge, L.L.C.
8. Time Warner Cable
9. United States Satellite Broadcasting Company, Inc.
10. Univison Communications, Inc.

**Ex Parte Comments:**

1. State of Alaska (January 14, 2002)
2. The State of Hawaii (January 11, 2002)
3. The State of Hawaii (October 25, 2001)
4. EchoStar Communications Corporation (March 14, 2001)
5. The State of Hawaii (March 16, 2001)
6. The State of Hawaii (January 29, 2001)

7. The State of Hawaii (November 21, 2001)
8. The State of Hawaii (October 30, 2000)
9. Senator Inouye, et. al. (October 6, 2000)
10. Microcom (March 7, 2000)
11. State of Hawaii (November 3, 1999)
12. PanAmSat Corporation (August 16, 1999)
13. State of Alaska (August 13, 1999)
14. Governor of the State of Alaska (August 6, 1999)
15. The State of Hawaii (June 24, 1999)
16. The State of Hawaii (August 8, 1998)
17. The State of Hawaii (July 14, 1998)
18. Microcom

**Congressionals:**

1. Representative Patsy Mink (D-HI) (Sept. 18, 2000 and Dec. 27, 1999)
2. Senator Daniel K. Akaka (D-HI) (January 4, 2000)
3. Senator Ted Stevens (R-AK) (February 15, 2000 and Sept. 21, 2000)
4. Senator Inouye (D-HI) (March 19, 1998 and Sept. 21, 2000)

**Public Notice Comments:**

1. EchoStar Communications Corporation
2. The State of Hawaii

**Reply Comments:**

1. DIRECTV, Inc.
2. The State of Alaska

**Appendix B: FINAL RULES**

For the reasons discussed above, the Federal Communications Commission amends title 47 of the Code of Federal Regulations, part 25, as follows:

**PART 25 -- SATELLITE COMMUNICATIONS**

1. The authority citation for Part 25 continues to read as follows:

AUTHORITY: 47 U.S.C. 701-744. Interprets or applies Sections 4, 301, 302, 303, 307, 309, and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, 332, unless otherwise noted.

Title 47 of the Code of Federal Regulations, Part 25, are amended as follows:

2. Section 25.109 is amended by removing paragraph (b) and by redesignating paragraph (c) as paragraph (b).
3. Section 25.111 is amended by adding paragraph (c) to read as follows:

**§ 25.111 Additional information.**

\* \* \* \* \*

(c) In the Direct Broadcast Satellite service, applicants and licensees shall also provide the Commission with all information it requires in order to modify the Appendix 30 Broadcasting-Satellite Service ("BSS") Plans and associated Appendix 30A feeder-link Plans, if the system uses technical characteristics differing from those specified in the Appendix 30 BSS Plans, the Appendix 30A feederlink Plans, Annex 5 to Appendix 30 or Annex 3 to Appendix 30A. For such systems, no protection from interference caused by radio stations authorized by other Administrations is guaranteed until the agreement of all affected Administrations is obtained and the frequency assignment becomes a part of the appropriate Region 2 BSS and feeder-link Plans. Authorizations for which coordination is not completed and/or for which the necessary agreements under Appendices 30 and 30A have not been obtained may be subject to additional terms and conditions as required to effect coordination or obtain the agreement of other Administrations. Applicants and licensees shall also provide the Commission with the necessary Appendix 4 information required by the ITU Radiocommunication Bureau to advance publish, coordinate and notify the frequencies to be used for tracking, telemetry and control functions of DBS systems.

4. Section 25.114 is amended revising paragraphs (c)(13) and (c)(14), and adding new paragraph (c)(22), to read as follows:

**§ 25.114 Applications for space station authorizations.**

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

\* \* \* \* \*

(13) Space station license applicants subject to this section other than Direct Broadcast Satellite applicants shall provide detailed information demonstrating the financial qualifications of the applicant to construct and launch the proposed satellites. Applications shall provide the financial information required by Sec. 25.140 (b) through (e), Sec. 25.142(a)(4), or Sec. 25.143(b)(3), as appropriate;

(14) A clear and detailed statement of whether the space station is to be operated on a common carrier basis, or whether non-common carrier transactions are proposed. If non-common carrier transactions are proposed, describe the nature of the transactions and specify the number of transponders to be offered on a non-common carrier basis. In addition, satellite applications in the Direct Broadcast Satellite service must provide a clear and detailed statement of whether the space station is to be operated on a broadcast or non-broadcast basis.

\* \* \* \* \*

(22) For satellite applications in the Direct Broadcast Satellite service, if the proposed system's technical characteristics differ from those specified in the Appendix 30 BSS Plans, the Appendix 30A feeder link Plans, Annex 5 to Appendix 30 or Annex 3 to Appendix 30A, each applicant shall provide:

(i) the information requested in Appendix 4 of the ITU's Radio Regulations. Further, applicants shall provide sufficient technical showing that the proposed system could operate satisfactorily if all assignments in the BSS and feeder link Plans were implemented.

(ii) analyses of the proposed system with respect to the limits in Annex 1 to Appendices 30 and 30A.

5. Section 25.121 is amended by revising paragraph (a) to read as follows:

**§ 25.121 License term and renewals.**

(a) License Term. Except for licenses for DBS facilities, licenses for facilities governed by this part will be issued for a period of 15 years. Licenses for DBS space stations licensed as broadcast facilities will be issued for a period of 8 years. Licenses for DBS space stations not licensed as broadcast facilities will be issued for a period of 10 years.

\* \* \* \* \*

6. Part 25 is amended by adding new Section 25.148 to read as follows:

**§ 25.148 Licensing Provisions for the Direct Broadcast Satellite Service.**

(a) License terms. License terms for DBS facilities are specified in § 25.121(a) of this Chapter.

(b) Due diligence. (1) All persons granted DBS authorizations shall proceed with due diligence in constructing DBS systems. Permittees shall be required to complete contracting for construction of the satellite station(s) within one year of the grant of the authorization. The satellite stations shall also be required to be in operation within six years of the authorization grant.

(2) In addition to the requirements stated in paragraph (1) of this section, all persons who receive new or additional DBS authorizations after January 19, 1996 shall complete construction of the first satellite in their respective DBS systems within four years of grant of the authorization. All satellite stations in such a DBS system shall be in operation within six years of the grant of the authorization.

(3) DBS licensees shall be required to proceed consistent with all applicable due diligence obligations, unless otherwise determined by the Commission upon proper showing in any particular case. Transfer of control of the authorization shall not be considered to justify extension of these deadlines.

(c) Geographic service requirements. Those entities acquiring DBS authorizations after January 19, 1996, or who after January 19, 1996 modify a previous DBS authorization to launch a replacement satellite, must provide DBS service to Alaska and Hawaii where such service is technically feasible from the authorized orbital location. This requirement does not apply to DBS satellites authorized to operate at the 61.5° W.L. orbital location. DBS applicants seeking to operate from locations other than 61.5° W.L. who do not provide service to Alaska and Hawaii, must provide technical analyses to the Commission demonstrating that such service is not feasible as a technical matter, or that while technically feasible such services would require so many compromises in satellite design and operation as to make it economically unreasonable.

(d) DBS subject to competitive bidding. Mutually exclusive initial applications to provide DBS are subject to competitive bidding procedures. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this part.

(e) DBS long form application. Winning bidders are subject to the provisions of § 1.2107 of this chapter except that in lieu of a FCC Form 601 each winning bidder shall submit the long-form satellite service application (FCC Form 312) within thirty (30) days after being notified by Public Notice that it is the winning bidder. Each winning bidder will also be required to submit by the same deadline the information described in Part 25, § 25.215 (Technical) and § 25.601 (EEO), and in paragraph (f) of this section. Each winner also will be required to file, by the same deadline, a signed statement describing its efforts to date and future plans to come into compliance with any applicable spectrum limitations, if it is not already in compliance. Such information shall be submitted pursuant to the procedures set forth in § 25.114 and any associated Public Notices.

(f) Technical qualifications. DBS operations must be in accordance with the sharing criteria and technical characteristics contained in Appendices 30 and 30A of the ITU's Radio Regulations. Operation of systems using differing technical characteristics may be permitted, with adequate technical showing, and if a request has been made to the ITU to modify the appropriate Plans to include the system's technical parameters.

7. Amend § 25.201 by adding the following definition:

**§25.201 Definitions.**

\* \* \* \* \*

Direct Broadcast Satellite Service. A radiocommunication service in which signals transmitted or retransmitted by space stations, using frequencies specified in § 25.202(a)(7), are intended for direct reception by the general public. For the purposes of this definition, the term direct reception shall encompass both individual reception and community reception.

\* \* \* \* \*

8. Amend Section 25.202 by revising footnote 9 in paragraph (a)(1) by adding paragraph (a)(7) to read as follows:

**§ 25.202 Frequencies, frequency tolerance and emission limitations.**

(a) \* \* \*

\* \* \* \* \*

<sup>9</sup>The use of the band 17.3-17.8 GHz by the Fixed-Satellite Service (Earth-to-space) is limited to feeder links for the Direct Broadcast Satellite Service, and the sub-band 17.7-17.8 GHz is shared co-equally with terrestrial fixed services.

\* \* \* \* \*

(a)(7) The following frequencies are available for use by the Direct Broadcast Satellite service:  
12.2 - 12.7 GHz: Space-to-Earth.

9. Amend Part 25 by adding new Section 25.215 to read as follows:

**§ 25.215 Technical requirements for space stations in the Direct Broadcast Satellite Service.**

In addition to Section 25.148(f), space station antennas operating in the Direct Broadcast Satellite service must be designed to provide a cross-polarization isolation such that the ratio of the on-axis co-polar gain to the cross-polar gain of the antenna in the assigned frequency band shall be at least 30 dB within its primary coverage area.

10. Section 25.601 is revised to read as follows:

**§ 25.601 Equal employment opportunity requirement.**

Notwithstanding other EEO provisions within these rules, an entity that uses an owned or leased fixed-satellite service or direct broadcast satellite service facility (operating under this part) to provide video programming directly to the public on a subscription basis must comply with the equal employment opportunity requirements set forth in part 76, subpart E, of this chapter, if such entity exercises control (as defined in part 76, subpart E, of this chapter) over the video programming it distributes. Notwithstanding other EEO provisions within these rules, a licensee or permittee of a direct broadcast satellite station operating as a broadcaster must comply with the equal employment opportunity requirements set forth in part 73.

11. Amend part 25 to add a subpart J to Part 25, Section 25.701 to read as follows:

**Subpart J-Public Interest Obligations**

**§ 25.701 Public Interest Obligations.**

(a) DBS providers are subject to the public interest obligations set forth in paragraphs (b) and (c) of this section. For purposes of this rule, DBS providers are any of the following:

(1) Entities licensed to operate satellites in the 12.2-12.7 GHz DBS frequency bands; or

(2) Entities licensed to operate satellites in the Ku-band fixed satellite service and that sell or lease capacity to a video programming distributor that offers service directly to consumers providing a sufficient number of channels so that four percent of the total applicable programming channels yields a set-aside of at least one channel of non-commercial programming pursuant to paragraph (c) of this section, or

(3) Non-U.S. licensed satellite operators in the Ku-band that offer video programming directly to

consumers in the United States pursuant to an earth station license issued under part 25 of this title and that offer a sufficient number of channels to consumers so that four percent of the total applicable programming channels yields a set-aside of one channel of non-commercial programming pursuant to paragraph (c) of this section,

*(b) Political broadcasting requirements-*

(1) *Reasonable access.* DBS providers must comply with §312(a)(7) of the Communications Act of 1934, as amended, by allowing reasonable access to, or permitting purchase of reasonable amounts of time for, the use of their facilities by a legally qualified candidate for federal elective office on behalf of his or her candidacy.

(2) *Use of facilities.* DBS providers must comply with §315 of the Communications Act of 1934, as amended, by providing equal opportunities to legally qualified candidates.

*(c) Carriage obligation for noncommercial programming*

(1) *Reservation requirement.* DBS providers shall reserve four percent of their channel capacity exclusively for use by qualified programmers for noncommercial programming of an educational or informational nature. Channel capacity shall be determined annually by calculating, based on measurements taken on a quarterly basis, the average number of channels available for video programming on all satellites licensed to the provider during the previous year. DBS providers may use this reserved capacity for any purpose until such time as it is used for noncommercial educational or informational programming.

(2) *Qualified programmer.* For purposes of these rules, a qualified programmer is:

(i) A noncommercial educational broadcast station as defined in §397(6) of the Communications Act of 1934, as amended,

(ii) A public telecommunications entity as defined in §397(12) of the Communications Act of 1934, as amended,

(iii) An accredited nonprofit educational institution or a governmental organization engaged in the formal education of enrolled students (A publicly supported educational institution must be accredited by the appropriate state department of education; a privately controlled educational institution must be accredited by the appropriate state department of education or the recognized regional and national accrediting organizations), or

(iv) A nonprofit organization whose purposes are educational and include providing educational and instructional television material to such accredited institutions and governmental organizations.

(v) Other noncommercial entities with an educational mission.

*(3) Editorial control.*

(i) A DBS operator will be required to make capacity available only to qualified programmers and may select among such programmers when demand exceeds the capacity of their reserved channels.

(ii) A DBS operator may not require the programmers it selects to include particular programming on its channels.

(iii) A DBS operator may not alter or censor the content of the programming provided by the qualified programmer using the channels reserved pursuant to this section.

(4) *Non-commercial channel limitation.* A DBS operator cannot initially select a qualified programmer to fill more than one of its reserved channels except that, after all qualified entities that have sought access have been offered access on at least one channel, a provider may allocate additional channels to qualified programmers without having to make additional efforts to secure other qualified programmers.

(5) *Rates, terms and conditions.*

(i) In making the required reserved capacity available, DBS providers cannot charge rates that exceed costs that are directly related to making the capacity available to qualified programmers. Direct costs include only the cost of transmitting the signal to the uplink facility and uplinking the signal to the satellite.

(ii) Rates for capacity reserved under paragraph (a) of this section shall not exceed 50 percent of the direct costs as defined in this section.

(iii) Nothing in this section shall be construed to prohibit DBS providers from negotiating rates with qualified programmers that are less than 50 percent of direct costs or from paying qualified programmers for the use of their programming.

(iv) DBS providers shall reserve discrete channels and offer these to qualifying programmers at consistent times to fulfill the reservation requirement described in these rules.

(6) *Public file.*

(i) Each DBS provider shall keep and permit public inspection of a complete and orderly record of:

(A) Quarterly measurements of channel capacity and yearly average calculations on which it bases its four percent reservation, as well as its response to any capacity changes;

(B) A record of entities to whom noncommercial capacity is being provided, the amount of capacity being provided to each entity, the conditions under which it is being provided and the rates, if any, being paid by the entity;

(C) A record of entities that have requested capacity, disposition of those requests and reasons for the disposition; and

(D) A record of all requests for political advertising time and the disposition of those requests.

(ii) All records required by this paragraph shall be placed in a file available to the public as soon as possible and shall be retained for a period of two years.

(7) *Effective date.* DBS providers are required to make channel capacity available pursuant to this section upon the effective date. Programming provided pursuant to this rule must be available to the public no later than six months after the effective date.

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11. Part 100 [removed].

12. Amend Title 47 by removing Part 100.



**JOINT STATEMENT OF  
COMMISSIONERS KEVIN J. MARTIN AND KATHLEEN Q. ABERNATHY**

*In the Matter of Policies and Rules for the Direct Broadcast Satellite Service, Report and Order, IB Docket No. 98-21.*

We are pleased to support this Order revising our rules governing Direct Broadcast Satellite (“DBS”) service and finally giving meaning to our rule that DBS operators “must provide DBS service to Alaska and Hawaii.” Consumers in these two states deserve access to similar DBS service options as their counterparts in the Mainland, and today we clarify our rule accordingly. We explain that our requirement to provide “service” to Alaska and Hawaii means that DBS providers must offer packages of services in Alaska and Hawaii that are reasonably comparable to what they offer in the contiguous 48 states. We believe this clarification will benefit consumers in Alaska and Hawaii tremendously, finally enabling them to enjoy the rich diversity of programming that DBS provides.



**SEPARATE STATEMENT OF COMMISSIONER MICHAEL J. COPPS  
DISSENTING IN PART, APPROVING IN PART**

*In the Matter of Policies and Rules for the Direct Broadcast Satellite Service, IB Docket No. 98-21.*

I support this Commission effort to clarify and streamline our existing rules. Consumers and companies have a right to the regulatory certainty that comes with clear and enforceable rules, and to the resolution of the long-pending consideration of these rules.

But some "streamlining" is not merely cosmetic, and instead may whittle away at important Congressional policies and goals. I am disturbed by the majority's decision to eliminate the provisions of our rules that track the foreign ownership restrictions of the Communications Act, and by what seems to me to be a lack of a strong policy rationale for this decision. I therefore dissent from the elimination of the provisions of Section 100.11.

Congress imposed a broad private foreign ownership restriction in Section 310(b) of the Act, restricting investment by foreign corporations or individuals in licensees across a range of communications services. When Congress adopted this provision, it could not have anticipated that a direct satellite service would be providing video service to millions of American homes. In adopting Section 100.11 in 1982, the Commission applied the statutory provision to DBS, intending, as the decision of the majority notes, that this new service be subject to the foreign ownership limitations set out by Congress. In a later decision, unrelated to foreign ownership, the Commission found that subscription DBS services are not "broadcasting." It is this decision that has been the basis of waivers of Section 100.11 for DBS providers.

The majority explains the decision to eliminate this rule in part relying upon the fact that the rule is so frequently waived that it needs to be eliminated to create regulatory certainty. That seems to be a false logic -- regulatory certainty could be achieved as easily by the retention and application of the rule. Similarly inadequate is the argument that the foreign ownership restriction disadvantages DBS vis-à-vis other services not subject to such restrictions, such as direct-to-home service and cable service. I do not see where these arguments provide sufficient rationale to dispense with the codification of the statutorily mandated foreign ownership limitations for the DBS service.

On a separate issue, I support the expansion of the requirements for DBS service in Alaska and Hawaii. Indeed, I was open to going even further to ensure that the citizens of Alaska and Hawaii receive packages of services comparable in programming, price and quality to those available to citizens of the mainland states. In parts of Alaska and Hawaii there are few options for consumers seeking multi-channel video programming. Given that some consumers in Alaska and Hawaii may not have a range of choices in their video programming provider, it is important that DBS provide service comparable to that provided to consumers on the mainland. Because of the difficulty in evaluating comparable packages, however, I support the decision to require DBS providers to serve Alaska and Hawaii with packages of services that are "reasonably" comparable to those available to citizens of the mainland. By packages of services, we refer to all offerings of programming to customers, including the base-programming offering. I expect the services provided to the citizens of Alaska and Hawaii to be no less than those provided on the mainland.

